

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**CONSOLIDATED WASTE SERVICES, CORP.**

**and**

**Cases 12-CA-192990  
12-CA-205450**

**ERICK E. CORREA-SANCHEZ**

**and**

**12-CA-199845**

**DANIEL ROSARIO FERNANDEZ**

**ORDER<sup>1</sup>**

The Employer's petition to quash subpoena duces tecum B-1-ZR47KX is denied. The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Employer has failed to establish any other legal basis for revoking the subpoena.<sup>2</sup> See

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<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> The Employer asserts that subpoena par. 5 is overbroad because it requires the Employer to produce text messages, social media messages, and other personal communications generated by supervisor Nelson Guilbe and other Employer's managers that are not within its control, and that to require the Employer to produce or search for such personal communications would violate the constitutional rights of its supervisors and managers. We find no merit to the Employer's unsupported contentions.

The Employer is not required to produce evidence requested in the subpoena that it does not possess, but it is required to conduct a reasonable and diligent search for all requested evidence, including requesting such information from its supervisors and managers, if necessary. See *Clear Channel Outdoor, Inc.*, 346 NLRB 696, 702 fn. 10 (2006) ("In responding to a subpoena, an individual is required to produce documents not only in his or her possession, but any documents that he or she had a legal right to obtain," citing *Searock v. Stripling*, 736 F.2d 650, 653 (11th Cir. 1984)). To the extent that the subpoenaed communications were generated by supervisory and managerial personnel using company equipment in the course of conducting company business, the Employer would have the legal right to obtain those communications. Accordingly, as such communications are in the Employer's control, the Employer is required to

generally, *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., May 24, 2018

MARK GASTON PEARCE,	MEMBER
LAUREN McFERRAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

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conduct a reasonable and diligent search for those communications and to either produce the information or affirmatively represent to the Region that the information does not exist. As to subpoenaed communications generated by supervisory and managerial personnel using strictly personal equipment or accounts that are not within the Employer's control, the Employer is required to request the information from its supervisors and managers. If the information does not exist, or if the supervisors and managers decline to provide the information, the Employer must affirmatively represent this fact to the Region. If the supervisors and managers do not comply with a request for the information from the Employer, the Region could seek that information directly from the supervisors and managers.